

OFFICIAL FILE
ILLINOIS COMMERCE COMMISSION

ORIGINAL

ILLINOIS
COMMERCE COMMISSION

MAR 12 4 49 PM '02

STATE OF ILLINOIS

CHIEF CLERK'S OFFICE

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission)

On Its Own Motion)

Revision of 83 Ill. Admin. Code Part 265)

Docket No. 01-0824

REPLY COMMENTS OF THE ILLINOIS TELECOMMUNICATIONS ASSOCIATION

The Illinois Telecommunications Association ("ITA") respectfully submits these reply comments on proposed revisions to 83 Ill. Admin. Code Part 265, "Protection of Underground Utility Facilities" ("Rule") authorized by Section 11 of the Illinois Underground Utility Facilities Damage Prevention Act ("Act") and pursuant to the schedule established by the Administrative Law Judge. These Reply Comments respond to comments and to proposed revisions to the Rule made by the Illinois Road and Transportation Builders Association ("IRTBA") filed February 25, 2002 with the Chief Clerk's Office of the Illinois Commerce Commission ("ICC").

Specifically, the Illinois Telecommunications Association's Reply Comments address IRTBA's recommended changes to the proposed Rule in Section 265.10 (Definitions), Section 265.30 (Location Records), Section 265.40 (Non-Emergency Excavation and Demolition), Section 265.45 (Notice of IDOT Preconstruction Conference, New Language), Section 265.50 (Emergency Excavation and Demolition) Section 265.100 (Reporting of Suspected Violations), Section 265.200 (Initial Consideration by Staff), and SUBPART G (Repealer, New Language).

*Hand Del
Ret
3-12-02
lt*

Section 265.10 Definitions

The IRTBA proposes the addition of a new definition "meaningful participation" and the deletion of the definition for "clear evidence". The ITA is opposed to both proposed revisions.

With respect to a new definition for "meaningful participation", the ITA fails to find a statutory reference of the term in the Act and finds its proposed use in the Rule by the IRTBA limited to one citation, SUBPART C: REVIEW OF REPORTED VIOLATIONS: Section 265.200 Initial Consideration by Staff, Paragraph b) 7) (c). The ITA finds that the proposed expansion of b) 7) is unwarranted and thus, the definition not needed. The IRTBA's recommendations to add this lengthy definition and to expand significantly Section 265.200 b) 7) relate more to the implementation of Public Act 92-0470, Senate Bill 699 passed by the General Assembly May 30, 2001 and signed into law August 22, 2001 and effective January 1, 2002. During the spring of the 2001 legislative session, both the ITA and the IRTBA were engaged in a rather lengthy process with the House of Representative sponsor to achieve a compromise in statutory purpose and language. In the end an agreement was reached and the goals of SB 699 were: to improve the communication among governmental entities, road builders (contractors) and utilities; to improve the coordination of the relocation of utility facilities; to reduce delays in road project completions; and to mitigate the damage to utility facilities. It is too early to determine the benefits of P.A. 92-0470 and the IRTBA's attempt to use this regulatory process to revisit its legislative efforts of the recent past are unwarranted.

The ITA is opposed to the proposed deletion of the definition for "clear evidence". The term is specifically used in Section 11 (i) of the Act and is appropriately used in the text of the Rule, Section 265.40 b).

Section 265.30 Location Records

The ITA is opposed to the IRTBA's proposed change to require location records to include the depth of facilities. During the ICC sponsored workshops, staff of the ICC agreed with the telecommunications industry that this requirement would be costly and burdensome and the language of Section 265.30 c) as it appears in the first notice of the Rule is appropriate.

Section 265.40 Non-Emergencies Excavation and Demolition

As previously stated, the ITA is opposed to the deletion of the definition of “clear evidence” and the IRTBA’s proposal that the term be dropped from Section 265.40 b) of the Rule.

The IRTBA proposes changing the words “and visually inspecting” to “or visually inspecting” in Section 265.40 d) of the Rule. The Act in Section 4 b) specifically requires “and (emphasis added) visually inspecting.”.

The IRTBA’s suggested change to Section 265.40 f) is not needed. The Act, in Section 4 f), specifically addresses the backfill of all excavations and the Rule appropriately repeats this language.

Section 265.45 Notice of IDOT Preconstruction Conference (IRTBA New Language)

IRTBA’s proposal to add this new Section may be in conflict with the Act and could cause the mitigation of a “required activity.” Section 5 of the Act is a two sentence paragraph. Section 265.45 of the IRTBA proposal reiterates the first sentence of the Act. The second sentence of the IRTBA’s new Section 265.45 reads, “If such notice is provided, but a specific start date is not established at the preconstruction conference, for the new construction, reconstruction, or maintenance of state highways in and near the area in which such owner or operator has placed underground utility facilities, then the notification shall constitute compliance (emphasis added) by IDOT, its contractors, its subcontractors, or its sub-subcontractors, with Sections 265.40 (b) and (d) of this Part.” In contrast, the second sentence of Section 5 of the Act reads, “In instances when notification of a preconstruction conference is provided to the owner or operator of an underground utility facility or CATS facility but no specific date is established at the preconstruction conference for the new construction, reconstruction or maintenance of State highways in and near the area in which the owner or operator has placed underground utility facilities, then the Department or its contractors shall later comply (emphasis added) with paragraph (d) of Section 4 of this Act.”

The ITA recommends that the IRTBA’s proposed new Section 265.45 be rejected

because the Act is abundantly clear on this issue. If Section 5 of the Act is codified, the ITA recommends that it be done accurately.

Section 265.50 Emergency Excavation and Demolition

Once again the IRTBA proposes changing a required element of the Act to a permissive one. The Act in Section 11 (i) states that an excavator “shall wait two hours.....”. The IRTBA proposes the Rule state in 265.50 b) “If feasible.....wait two hours”. The ITA recommends the IRTBA language be rejected.

Section 265.100 Reporting of Suspected Violations

The ITA disagrees with the IRTBA’s proposal to require the utility to inform the accused violator and the owner of the public right-of-way when a violation is reported to the Illinois Commerce Commission. This notification is the responsibility of the ICC not the utility. As the Section is defined, the report is of a “suspected violation” and no further requirement at this time should be placed on the utility.

Section 265.200 Initial Consideration of Staff

As previously addressed in the ITA’s reply comments for the Section on definitions, the IRTBA’s significant expansion to paragraph b) 7) is unwarranted. The IRTBA suggests specific language under the heading of special circumstances. The IRTBA is recommending that their proposed list of circumstances be absolute and absolve parties of any punitive action by the ICC. The ITA disagrees with this proposed language and recommends that the determination of special circumstances be left to the judgement of the staff of the ICC.

The ITA also recommends that the IRTBA’s proposal to codify the “fine matrix” be rejected. Again, the ITA suggests that the ICC maintain a certain degree of flexibility in administering the enforcement responsibilities of the Act, especially during the initial implementation phase. Codifying a “fine matrix” would eliminate this desired degree of flexibility.

SUBPART G Repealer

The ITA is opposed to a recommendation to “sunset” the Rule. The Act does not contain a sunset provision and all parties have the ability to petition the ICC in the future to open the Rule for further consideration.

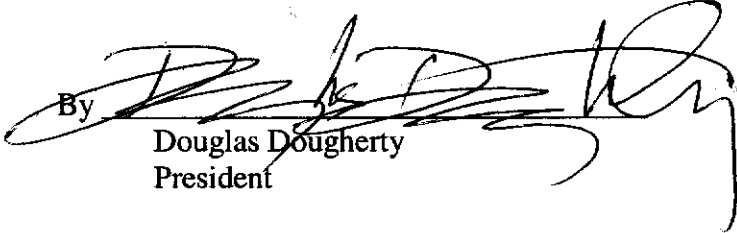
Conclusion

The Illinois Telecommunications Association respectfully requests that the Illinois Commerce Commission consider these reply comments.

Dated: March 12, 2002

Respectfully submitted,

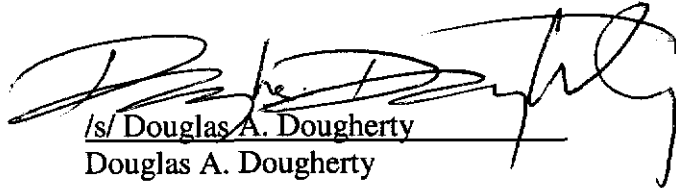
ILLINOIS TELECOMMUNICATIONS ASSOCIATION

By 
Douglas Dougherty
President

The Illinois Telecommunications Association
300 E. Monroe St.
P.O. Box 730
Springfield, IL 62705
Phone 217.525.1044
Fax 217.525.1103
Email ddougherty@ameritech.net

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments of the Illinois Telecommunications Association was served on all parties of record via electronic mail and U.S. Mail on this 12th day of March 2002.


/s/ Douglas A. Dougherty
Douglas A. Dougherty

Service List:

Peter Brigida
Peoples Gas/North Shore
23rd Floor
130 East Randolph Drive
Chicago, IL 60601

Linda M. Buell
Office of General Counsel
Illinois Commerce Commission
527 E. Capitol Avenue
Springfield, IL 62701

Thomas M. Byrne
CIPS/UE
(MC1310)
P.O. Box 66149
St. Louis, MO 63166-6149

Simone Byvoets
Exelon Business Services Company
PO Box 805379
10 S. Dearborn St.
Chicago, IL 60680-5379

Matt C. Deering
Atty. For IITA
Meyer Capel, a Professional Corporation
306 W. Church St., PO Box 6750
Champaign, IL 61826-6750

John Gomoll
Vice President
222 West Adams, Ste. 1500
Chicago, IL 60606

Elias M. Gordan
Atty. For Illinois Road &
Transportation Builders Assoc.
PO Box 60
Palos Park, IL 60464-0060

Matthew A. Greene
Attorney
Peoples Gas/North Shore
130 E. Randolph Drive, 23rd Fl.
Chicago, IL 60601

Michael Guerra
Attorney for Verizon North/South Inc.
Sonnenschein Nath & Rosenthal
8000 Sears Tower
Chicago, IL 60606

Cheryl Hamill
Attorney
AT&T
Suite 1500, 222 W. Adams
Chicago, IL 60606

James Hinchliff
Attorney
Peoples Gas/North Shore
130 E. Randolph Dr., 23rd Fl.
Chicago, IL 60601

James Huttenhower
Illinois Bell Telephone Company
Suite 25-D
225 W. Randolph St.
Chicago, IL 60606

Robert P. Jared
Regulatory Law & Analysis
MidAmerican Energy Company
106 E. Second St.
P.O. Box 4350
Davenport, IA 52808

Mark A. Kerber
Counsel
Illinois Bell Telephone Company
225 W. Randolph St., 25D
Chicago, IL 60606

Joseph L. Lakshmanan
Illinois Power Company
500 S. 27th St.
Decatur, IL 62521-2200

Steven Matrisch
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701

Stephen J. Mattson
Atty. For Northern Illinois Gas
d/b/a Nicor Gas Company
Mayer Brown, Rowe & Maw
190 S. LaSalle St.
Chicago, IL 60603-3441

Thomas M. Moretti
Coordinator Rate Administration
Northern Illinois Gas Company
d/b/a Nicor Gas Company
1844 Ferry Road
Naperville, IL 60563-9600

Dennis K. Muncy
Atty. For IITA
Meyer Capel, a Professional Corporation
306 W. Church St. P.O. Box 6750
Champaign, IL 61826-6750

Joseph D. Murphy
Atty. For IITA
Meyer Capel, a Professional Corporation
306 West Church St., PO Box 6750
Champaign, IL 61826-6750

Angela O'Brien
Atty. For Northern Illinois Gas Company
d/b/a Nicor Gas Company
Mayer, Brown, Rowe & Maw
190 South LaSalle St.
Chicago, IL 60603

Mark Ortlieb
Illinois Bell Telephone Company
225 West Randolph, 25D
Chicago, IL 60606

Bill Riley
Case Manager
Illinois Commerce Commission
527 E. Capitol Ave.
Springfield, IL 62701

John Rooney
Atty. For Verizon North/South Inc.
Sonnenschein Nath & Rosenthal
8000 Sears Tower
Chicago, IL 60606

Scott Rubins
Illinois Independent Telephone Association
PO Box 330
111 E. First St.
Geneseo, IL 61254

Sue A. Schultz
General Counsel
Illinois-American Water Company
300 N. Water Works Drive
PO Box 24040
Belleville, IL 62223

A. Randall Vogelzang
Verizon Services Group
600 Hidden Ridge
Irving, TX 75038

Nancy Wells
AT&T
620 South 5th St.
Springfield, IL 62703

Shig W. Yasunaga
Illinois Power Company
500 South 27th St.
Decatur, IL 62521-2200

Christopher W. Zibart
Atty. For Commonwealth Edison Company
Foley & Lardner
Three First National Plaza, Ste. 4100
Chicago, IL